

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 192 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

BAI NARMADA NANA WD/O CHHOTABHAI

Versus

BAI LAKHIBEN WD/O JIVABHAI

Appearance:

1. Civil Revision Application No. 192 of 1990
MR NN PATEL for
MR NITIN N PANDYA for Petitioner No. 1
..... for Petitioner No. 2-6
MR SULEMAN I DOLA for
MR MI DOLA for Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT
Date of decision: 19/04/2005

ORAL JUDGEMENT

Feeling aggrieved by the judgment and order dated 27th December, 1988 passed by the learned Extra Assistant Judge, Bharuch in Regular Civil Appeal No.126 of 1984, the respondents-plaintiffs in Civil Suit No.118 of 1979 have preferred the present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"].

The petitioners are the landlords of the suit premises, the ground floor of the House No.1700, situated at Jambusar. The suit premises was leased to the respondent-defendant on 4th January, 1967 for a monthly rent of Rs.8/=. The defendant had paid a sum of Rs.100/=, the rent in advance upto 14th September, 1968. Since then, the defendant was in arrears of rent. The plaintiffs, therefore, instituted Civil Suit No.154 of 1975 for recovery of possession of the suit premises on the ground that the defendant was the tenant in-default, and that she was not ready and willing to pay the rent. In the said proceeding, the standard rent of the suit premises was determined to be Rs. 5/= per month. It was held that the defendant was in arrears of rent since 14th September, 1968, as alleged. A decree for recovery of arrears of rent for three years preceding the date of the suit i.e. for a sum of Rs.180/= was passed. The suit for recovery of the possession of the suit premises was dismissed on the ground that the suit notice was not legal and valid. In spite of the said decree, neither the defendant paid the decretal amount nor did she pay the standard rent determined by the Court. The petitioners, therefore, instituted Civil Suit No. 118 of 1979 in the Court of the learned Civil Judge [JD], Jambusar for recovery of possession of the suit premises and the arrears of rent due. The learned Civil Judge by his judgment and order dated 28th February, 1984 held that the defendant was in arrears of rent and was not ready and willing to pay the rent. The learned Civil Judge, therefore, allowed the suit for recovery of possession of the suit premises and also for recovery of rent for three years preceding the date of the suit. Feeling aggrieved, the defendant preferred above referred Civil Appeal No. 126 of 1984. The appeal came to be allowed by the lower appellate court on 27th December, 1988. The lower appellate court was of the opinion that the defendant was not liable to pay the rent for the period prior to the date of the decree passed in Civil Suit No. 154 of 1975 and that in answer to the suit notice, she had sent a money order of Rs.180/= i.e. the rent for three years

since the date of the previous decree to the concerned advocate. Thus, the defendant had proved that she was ready and willing to pay the rent. Feeling aggrieved, the plaintiffs have preferred the present Revision Application.

Both the Courts below have recorded a concurrent finding that except the advance payment of Rs.100/= made on 4th January, 1967, the defendant had not paid any amount towards the rent. The defendant had not satisfied the decree passed in the earlier Civil Suit No. 154 of 1975. In answer to the notice of demand of arrears of rent of Rs.608/=-, as envisaged by Section 12 (2) of the Rent Act, the defendant sent a sum of Rs.180/=-, the amount of rent due since the date of decree passed in the Civil Suit No. 154 of 1975. The said amount was sent to the concerned advocate who did not accept the said amount. Nevertheless, the lower appellate court has considered it to be a valid tender of the amount of arrears of rent. I am of the opinion that the lower appellate court has manifestly erred in holding that the defendant was not liable to pay the rent for which the decree was passed in Civil Suit No. 154 of 1975. The provisions under the Rent Act do not make any distinction between the rent due under the lease agreement and the rent due under the decree of the Court. The rent due under the decree of the Court is also the rent payable by the tenant and if not paid, the landlord shall have right to claim recovery of possession of the rented premises. As recorded hereinabove, the defendant was clearly in arrears of rent since 14th September, 1968. Even the decree passed by the Civil Court in Civil Suit No.154 of 1975 was not satisfied by the defendant. Hence, the decree for eviction was inevitable.

For the aforesaid reasons, the Revision Application is allowed with cost. The judgment and order dated 27th December, 1988 passed by the learned Extra Assistant Judge, Bharuch in Regular Civil Appeal No. 127 of 1984 is quashed and set-aside. The judgment and decree dated 28th February, 1984 passed by the learned Civil Judge [JD], Jambusar in Civil Suit No. 118 of 1979 is restored. Rule is made absolute.

{Miss R.M Doshit, J.}

Prakash*